

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:07CV488-3-MU
(3:03CR134-7-MU)

P.J. GILYARD,)
)
Petitioner,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
Respondent.)
)

OR D E R

THIS MATTER is before the Court on Petitioner's "Second Supplemental Motion" filed on April 24, 2009, (Document No. 6.) In his motion, Petitioner is seeking to amend his § 2255 motion which was denied and dismissed on initial review on November 20, 2007 (Doc. No. 2.) For the reasons stated herein, the Petitioner's motion is denied.

In this instant motion, Petitioner asks that he be permitted to amend his motion to vacate pursuant to Rule 15 of the Federal rules of Civil Procedure. This Court cannot allow Petitioner to amend his motion to vacate, because his motion was denied on November 20, 2007 and his case was dismissed. To the extent Petitioner is attempting to file a second motion to vacate, he must first certify his motion with the Fourth Circuit Court of Appeals. Indeed, the Antiterrorism and Effective Death Penalty Act ("the AEDPA") requires that a "second or successive motion must be certified . . . by a panel of the appropriate court of appeals . . ." before it can be filed in the District Court. Id. "Before a second or successive application [for habeas corpus] is filed in the district court, the

applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244 (b)(3)(A).

THEREFORE, IT IS HEREBY ORDERED that Petitioner’s “Second Supplemental Motion” (Document No. 6) is denied.

SO ORDERED.

Signed: April 27, 2009



Graham C. Mullen
United States District Judge

